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money to purchase more liquor from the defendant, in order to conclusively establish the offense, his credibility was for the jury; and an instruction that the testimony of a detective, or one acting as such should be considered with more than ordinary caution was properly refused.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1786-1789; Dec. Dig. § 758.\* 7 Va.-W. Va. Enc. Dig. 730.]

**4. Criminal Law (§ 814\*)—Trial—Issues—Presumption of Good Character.**—In a prosecution for the unlawful sale of intoxicating liquor, the character of the defendant was not in issue unless put in issue by him, so that an instruction that, in the absence of any evidence as to his character, he was presumed to be a man of good character was properly refused.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 1821, 1833, 1839, 1860, 1865, 1883, 1890, 1924, 1979-1985, 1987; Dec. Dig. § 814.\* 7 Va.-W. Va. Enc. Dig. 720.]

Error to Corporation Court of Danville.

Lewis Robinson was convicted of unlawfully selling ardent spirits, and he brings error. Affirmed.

*B. H. Custer and Harry Wooding, Jr.*, both of Danville, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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POSTAL TELEGRAPH-CABLE CO. OF NORFOLK, Inc. *v.*  
CITY OF NORFOLK.

Jan. 13, 1916.

[87 S. E. 555.]

**1. Licenses (§ 5½\*)—License Taxes—Validity.**—Under Const. § 170, providing for the levy of license taxes upon any business which cannot be reached by the ad valorem system, partially graduated license taxes may be imposed as revenue measures by a city on the business of sending and receiving telegrams, though the tax could not be upheld as an inspection or police tax.

[Ed. Note.—For other cases, see Licenses, Dec. Dig. § 5½.\* 9 Va.-W. Va. Enc. Dig. 308.]

**2. Licenses (§ 7\*)—Validity—Double Taxation.**—Though the properties of a telegraph company have been subjected to an ad valorem tax, the imposition of a license tax for revenue upon the business of sending telegrams is not invalid as subjecting the property to double taxation.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 7-15, 19; Dec. Dig. § 7.\* 9 Va.-W. Va. Enc. Dig. 322]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Licenses (§ 7\*)—Validity—Presumptions.**—In the absence of evidence it cannot be assumed that the cost of sending or receiving an intrastate telegram at a given point is the same as that for an interstate telegram, and license tax on the intrastate business will not be invalidated as excessive on a showing based on such comparisons.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 7-15, 19; Dec. Dig. § 7.\* 9 Va.-W. Va. Enc. Dig. 321.]

**4. Licenses (§ 7\*)—Proceedings—Burden of Proof.**—Where a telegraph company attached as unconstitutional an ordinance imposing a license tax on its intrastate business, it has the burden of proving unconstitutionality by evidence upon which the court can base a reasonable judgment.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 7-15, 19; Dec. Dig. § 7.\* 9 Va.-W. Va. Enc. Dig. 308.]

**5. Commerce (§ 63\*)—Licenses (§ 7\*)—Telegraph Companies—Validity.**—Evidence held insufficient to show that a license tax upon the intrastate business of a telegraph company was an illegal burden on interstate commerce or confiscatory.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. §§ 100, 103-122; Dec. Dig. § 63\*; Licenses, Cent. Dig. §§ 7-15, 19; Dec. Dig. § 7.\* 9 Va.-W. Va. Enc. Dig. 321.]

Error to Circuit Court of City of Norfolk.

Proceeding by the City of Norfolk against the Postal Telegraph-Cable Company of Norfolk, Incorporated. The company was fined in the police court, and appealed to the circuit court. Judgment there going against the company, it brings error. Affirmed.

*Robert W. Shultice*, of Norfolk, *W. W. Cook* and *R. H. Overbaugh*, both of New York City, and *J. N. Sebrell, Jr.*, of Norfolk, for plaintiff in error.

*George Pilcher*, of Norfolk, for defendant in error.

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NORFOLK & W. RY. CO. *v.* ALLEN et al.

June 10, 1915. On Rehearing, Jan. 13, 1916.

[87 S. E. 558.]

**1. Pleading (§ 355\*)—Limitations—Striking Out Pleas.**—Where there are three pleas of the statute of limitations, two of them are properly stricken where the facts proven therein are equally proven under the plea not stricken.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 1102-1110; Dec. Dig. § 355.\* 11 Va.-W. Va. Enc. Dig. § 228.]

**2. Trial (§ 252\*)—Instructions—Applicability of Evidence.**—In a

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.